



Industrial Telecommunications Association, Inc.

EX PARTE OR LATE FILED

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March 20, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 "M" Street, Room 200
Washington, D.C. 20554

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Ex Parte* Notification
PR Docket No. 92-235

Dear Ms. Roman Salas:

The Industrial Telecommunications Association, Inc. ("ITA"), pursuant to Section 1.1206(b)(1) of the Commission's Rules, hereby notifies the Commission that the attached letters were submitted to Chairman Kennard, Commissioner Ness, Commissioner Furchtgott-Roth, Commissioner Powell, and Commissioner Gloria Tristani. Please enter these letters into the record of the above referenced proceeding.

If you have any questions regarding these matters, do not hesitate to contact me.

Respectfully submitted,

John Kneuer
Executive Director
Government Relations

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Industrial Telecommunications Association, Inc.

March 20, 1998

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Dear Mr. Chairman:

We have enclosed for your review a copy of my letter to Senators Burns and Dorgan, which is intended to provide additional information in response to their recent recommendations to your office regarding the FCC's management of private wireless emergency road service radio systems.

This particular matter is of extreme interest to the American Automobile Association (AAA), the Association of Public Safety Communications Officials-International (APCO), the Industrial Telecommunications Association (ITA) and, certainly, to other organizations that represent private wireless constituents. The "refarming" proceeding (PR Docket No. 92-235) needs to be concluded, and the issues that Senators Burns and Dorgan raised regarding the application of competitive bidding processes, at least insofar as they apply to private wireless, are no less critical.

We look forward to the opportunity of continuing discussions with your office on these crucial private wireless matters. Pursuant to Section 1.1206(b)(1) of the Commission's rules, copies of this letter and the enclosed letter to Senators Burns and Dorgan have been filed with the FCC Secretary's office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark E. Crosby', is written over a large, stylized diagonal line that spans across the signature area.

Mark E. Crosby
President/CEO

MEC:bjl
Enclosure

cc: The Secretary

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Industrial Telecommunications Association, Inc.

March 20, 1998

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, DC 20554

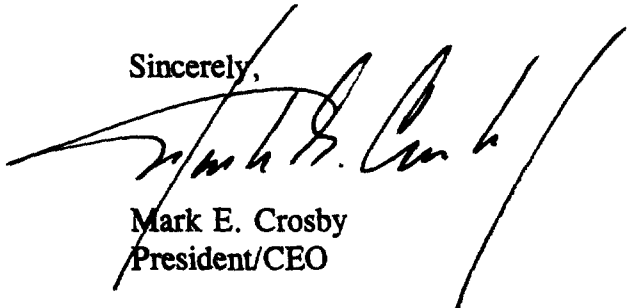
Dear Commissioner Ness:

We have enclosed for your review a copy of my letter to Senators Burns and Dorgan, which is intended to provide additional information in response to their recent recommendations to your office regarding the FCC's management of private wireless emergency road service radio systems.

This particular matter is of extreme interest to the American Automobile Association (AAA), the Association of Public Safety Communications Officials-International (APCO), the Industrial Telecommunications Association (ITA) and, certainly, to other organizations that represent private wireless constituents. The "refarming" proceeding (PR Docket No. 92-235) needs to be concluded, and the issues that Senators Burns and Dorgan raised regarding the application of competitive bidding processes, at least insofar as they apply to private wireless, are no less critical.

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Mark E. Crosby
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cc: . The Secretary

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Industrial Telecommunications Association, Inc.

March 20, 1998

Commissioner Harold W. Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, DC 20554

Dear Commissioner Furchtgott-Roth:

We have enclosed for your review a copy of my letter to Senators Burns and Dorgan, which is intended to provide additional information in response to their recent recommendations to your office regarding the FCC's management of private wireless emergency road service radio systems.

This particular matter is of extreme interest to the American Automobile Association (AAA), the Association of Public Safety Communications Officials-International (APCO), the Industrial Telecommunications Association (ITA) and, certainly, to other organizations that represent private wireless constituents. The "refarming" proceeding (PR Docket No. 92-235) needs to be concluded, and the issues that Senators Burns and Dorgan raised regarding the application of competitive bidding processes, at least insofar as they apply to private wireless, are no less critical.

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Sincerely,

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Mark E. Crosby
President/CEO

MEC:bjl
Enclosure

cc: The Secretary

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Industrial Telecommunications Association, Inc.

March 20, 1998

Commissioner Michael K. Powell
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, DC 20554

Dear Commissioner Powell:

We have enclosed for your review a copy of my letter to Senators Burns and Dorgan, which is intended to provide additional information in response to their recent recommendations to your office regarding the FCC's management of private wireless emergency road service radio systems.

This particular matter is of extreme interest to the American Automobile Association (AAA), the Association of Public Safety Communications Officials-International (APCO), the Industrial Telecommunications Association (ITA) and, certainly, to other organizations that represent private wireless constituents. The "refarming" proceeding (PR Docket No. 92-235) needs to be concluded, and the issues that Senators Burns and Dorgan raised regarding the application of competitive bidding processes, at least insofar as they apply to private wireless, are no less critical.

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President/CEO

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cc: The Secretary

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Industrial Telecommunications Association, Inc.

March 20, 1998

Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, DC 20554

Dear Commissioner Tristani:

We have enclosed for your review a copy of my letter to Senators Burns and Dorgan, which is intended to provide additional information in response to their recent recommendations to your office regarding the FCC's management of private wireless emergency road service radio systems.

This particular matter is of extreme interest to the American Automobile Association (AAA), the Association of Public Safety Communications Officials-International (APCO), the Industrial Telecommunications Association (ITA) and, certainly, to other organizations that represent private wireless constituents. The "refarming" proceeding (PR Docket No. 92-235) needs to be concluded, and the issues that Senators Burns and Dorgan raised regarding the application of competitive bidding processes, at least insofar as they apply to private wireless, are no less critical.

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Mark E. Crosby
President/CEO

MEC:bjl
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Industrial Telecommunications Association, Inc.

March 20, 1998

The Honorable Conrad Burns
The Honorable Byron L. Dorgan
United States Senate
Washington, D.C. 20510

**Re: American Automobile Association
FCC PR Docket No. 92-235 (Refarming)
The Balanced Budget Act of 1997**

Dear Senators Burns and Dorgan:

We recently had the opportunity to review your concerns for the emergency road services industry, which you brought to the attention of Federal Communications Commission Chairman William E. Kennard in your letter of February 17, 1998. Subsequent to that correspondence, both the American Automobile Association (AAA) and the Association of Public-Safety Communications Officials-International, Inc. (APCO), provided the FCC and your offices with additional comments in response to your thoughtful recommendations.

On behalf of ITA's national membership of more than 5,000 Industrial, Business and Transportation private wireless communications licensees, we respectfully submit the following observations. These observations are intended to add clarity to a few of the more critical issues that face not only the emergency road services but the entire private wireless industry, of which the emergency road services are representative. ITA is an FCC-certified Frequency Advisory Committee, in which capacity we conduct in excess of 10,000 spectrum certifications annually for prospective licensees, which facilitate the deployment and FCC licensing of private wireless radio systems.

Without a doubt, the FCC and the private wireless industry have labored over the long-standing and yet-to-be concluded proceeding known simply as "refarming." It may hold the last immediate and viable spectrum alternative for the private wireless industry, an industry that encompasses hundreds of thousands of entities that utilize private radio communications facilities to protect the safety of their employees and the general public and promote the productivity of their business pursuits. With current national policy primarily directed toward the commercial telecommunications marketplace and the generation of revenues for budget considerations, non-public safety private wireless interests are anxiously awaiting closure of this proceeding, which commenced in 1992. Frankly, it is all we have, at least for the foreseeable future.

... / ...

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The FCC has often articulated its overriding objectives for the consolidation of twenty traditional radio services into the Industrial/Business and Public Safety pools. This consolidation, which took effect October 17, 1997, serves to: (1) evenly distribute the available frequencies between former low-use and high-use radio services; (2) simplify interservice sharing procedures; (3) organize channel allocations in a way that will facilitate the implementation of advanced digital technologies; and (4) promote more efficient and flexible spectrum use.

ITA wholeheartedly agrees that radio service consolidation supports the above strategic spectrum objectives. Advanced digital technology makes the issue of what type of entity is using a particular private wireless channel largely irrelevant. Radio service consolidation also removed artificial spectrum access barriers that prejudiced certain classes of private wireless users. For example, prior to radio service consolidation, there were only nineteen primary automobile emergency radio service frequencies. After consolidation, an automobile emergency applicant may access literally hundreds of channels that are now available within the broad Industrial/Business pool, a clear benefit that will serve all automobile emergency operators, whether they are AAA-affiliated or not.

In your letter to Chairman Kennard, you also refer to Section 3002(a) of the Balanced Budget Act of 1997 and its reference to the emergency road services. Because this section of the Act has been a source of concern in the private wireless industry, we take this opportunity to express our views on this matter. What concerns many private wireless licensees is the uncertainty that seems to surround the limits to the FCC's auction authority. Section 3002(a), as codified in Section 309(j)(2) of the Telecommunications Act, specifically exempts from auction:

[P]rivate internal radio services used by ... non-government entities *and including emergency road services* provided by not-for-profit organizations, that — (i) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public.

From ITA's perspective, this exemption includes not just emergency road services but virtually all types of private internal radio services. For example, also significantly contributing to the safety of life, health and property are private internal systems in use by the agricultural, airline, taxicab, trucking, construction, road-building, manufacturing, ranching, energy exploration, forest products, mining and telephone (wireline) maintenance industries, to name a few. In fact, in the state of Montana, there are more than 6,400 private wireless systems; and in the state of North Dakota, in excess of 7,000 private wireless systems. The majority of the licensees of these systems are engaged in either ranching or farming activities and depend upon

their private radio systems to protect their employees and enhance their productivity and operations.

ITA believes that its view is consistent with that of Congress, as expressed in the Budget Act Conference Report language. The Conference Report advises that:

[the] exemption from competitive bidding authority for 'public safety radio services' includes 'private internal radio services' used by utilities, railroads, metropolitan transit systems, pipelines, private ambulances, and volunteer fire departments. Though private in nature, the services offered by these entities protect the safety of life, health, or property and are not made commercially available to the public. This service exemption also includes radio services used by not-for-profit organizations that offer emergency road services.

Because the conferees made the point of specifically identifying emergency road services as an example of an exempt radio service, ITA believes that the list included in the report language was not meant to be all inclusive. As mentioned above, nearly all private wireless services, including those used in the agriculture and ranching industries, are used for the protection of life and property. However, confusion remains over Congressional intent.

In other words, the current language that provides the FCC with auction application guidance, at least insofar as it applies to the nations's non-public safety private wireless community, is vague. This induces FCC reticence on private wireless regulatory activities and, concurrently, produces counter-productive assertions from private wireless sectors that their use of spectrum is as vital as police and fire departments.

It is ITA's view that not all private wireless communications applications are as crucial to the public interest as those that are accompanied by "guns and hoses." Regardless, all private wireless communications systems contribute to the public's general welfare in a fashion that is extremely difficult to discern and quantify.

What is left of the private wireless spectrum is now effectively shared along broad classifications, specifically Industrial/Business and Public Safety. Tremendous value is generated for the American public that cannot be measured through auction revenues. However, because of the uncertainty that surrounds the 1997 amendments to the competitive bidding rules, ITA fears that the FCC may interpret the new rules in a way that permits auctions for private wireless spectrum, *including spectrum available for emergency road services.*

ITA's fear in this regard is based upon the FCC's past expansive interpretations of its auction authority with regards to both the 800 MHz and 220 MHz bands. Prior to the 1997 amendments to the Act, all "non-commercial licensees" were exempt from auction. This, however, did not prevent the FCC from publishing rules that placed non-commercial spectrum in the 800 MHz band on the auction block. To justify its auction, the FCC stated that non-commercial licensees "may not only apply individually for geographic area licenses, but may also participate in joint ventures (with other non-commercial operators, or with commercial service providers) or obtain spectrum through partitioning and disaggregation to meet their spectrum needs." From ITA's perspective, this statement provided thin justification for what appeared to be a clear attempt to circumvent the Congressional prohibition on auctions for private wireless licensees.

ITA believes that Congress shares its concerns relating to the FCC's interpretation of its auction authority. In fact, the Budget Conferees specifically admonished the FCC in this regard: "The conferees are particularly concerned that the FCC might interpret its expanded competitive bidding authority in a manner that minimizes its obligations under section 309 (j)(6)(E), thus overlooking engineering solutions, negotiations, or other tools that avoid mutual exclusivity."

Based on this regulatory pattern, it is ITA's view that the FCC will either continue to craft rules that make all private wireless licensees subject to auction or simply refrain from making new spectrum allocations for those services that are exempt from auction. Consequently, ITA urges you to increase your involvement in these matters beyond the specific regulatory issues raised in your letter. The FCC's auction authority, at least insofar as it applies to non-public safety private wireless licensees, deserves increased Congressional oversight. The private wireless industry requires committed federal-level attention to sustain the benefits it provides the American public and the national economy.

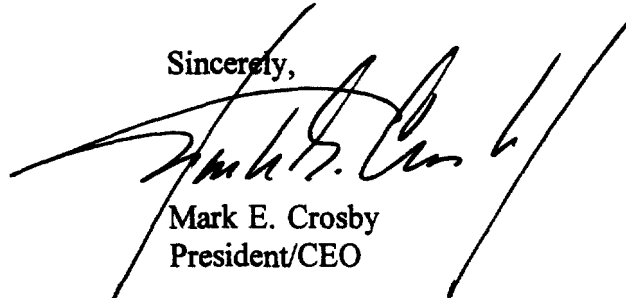
Finally, in response to AAA's subsequent correspondence of March 2, 1998, ITA offers a few additional observations. In the refarming proceeding, the FCC did not classify any Industrial/Business eligible as "quasi Public Safety." In fact, the FCC did not even accept the ITA recommendation that this pool be termed the "Public Service" pool.

The FCC did grant the existing Frequency Advisory Committees for the petroleum, power and railroad radio services with absolute jurisdictional control over the future placement of any Industrial/Business systems on exclusive petroleum, railroad and power frequency allocations. However, full frequency sharing among Industrial/Business licensees on these channels is permitted. Frequency Advisory Committee-endorsed processes are in place today that would allow AAA to contest any application that would serve to jeopardize an incumbent AAA-affiliated entity. Non-AAA-affiliated emergency road service operators may now utilize any

Frequency Advisory Committee of their choice to accommodate their spectrum assignment requirements. It is our understanding that AAA provides frequency advisory services to any eligible applicant within the entire Industrial/Business pool.

ITA is committed to working with AAA and all representatives of the private wireless radio services for the preservation of this vital industry. We sincerely appreciate your interest in these matters and look forward to working with you and your staffs in the critical months ahead.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark E. Crosby", is written over a large, stylized diagonal line that extends from the bottom left towards the top right of the signature area.

Mark E. Crosby
President/CEO

MEC:bjl

cc: Chairman William E. Kennard
Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael K. Powell
Commissioner Gloria Tristani
Ari Fitzgerald, Esq.
David R. Siddall, Esq.
Kevin Martin, Esq.
Paul E. Misener, Esq.
Peter A. Tenhula, Esq.
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Daniel Phythyon, Esq.
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Steven F. Morris, Esq.
Robert M. Gurss, Esq.